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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/440,149	11/15/1999	ALVIN L. NEELEY	P112554	2595

7590 12/14/2001

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EXAMINER

UNDERWOOD, DONALD W

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 12/14/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/440149

Applicant(s)

Neeley et al

Examiner

Underwood

Group Art Unit

3652

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 09/20/01
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1, 3-21 is/are pending in the application.
- Of the above claim(s) 11, 12, 14-20 is/are withdrawn from consideration.
- ☐ Claim(s) 21 is/are allowed.
- ☐ Claim(s) 1, 3-9, B is/are rejected.
- ☐ Claim(s) 10 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

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### DETAILED ACTION

1. Receipt of applicant's appeal brief filed 9/20/01 is acknowledged. However, the finality of paper no. 13 is herein withdrawn and the following Office action issued. This course of action is the result of newly discovered references. If a future appeal in this case is taken no appeal fee will be needed. The examiner regrets any inconvenience caused by this action.
2. Claims 11, 12 and 14-20 stand withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to a non-elected invention. Election was made **without** traverse in Paper No. 4 of parent case 09/233,471.
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

4. Claims 1, 3, 4, 7-9 and 13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by newly cited UK Patent application 2045206.

Note the mechanism can be steered by wheel 65. When the mechanism is pulled right or left by wheel 65 the rear wheel serve as a pivot. This motion is like that of a standard floor jack.

5. Claims 1-9 and 13 are rejected under 35 U.S.C. 102<sup>(e)</sup> as being clearly anticipated by Eckloff et al.

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This rejection is presented to provide a complete action.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1-9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over newly cited UK patent application 2045206 or newly cited Schmitz in view of Schaller.

It would have been obvious to use wheels at one end and a non-wheeled pivot at the other end of the mechanism in either primary reference if desiring to rotate a manhole cover from a hole and then back in view of the teaching in Schaller (elements 20, 21).

9. Claims 1-9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over British reference 2111017 in view of Schaller as applied in paragraph 9 of paper no. 13.

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10. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claim 21 is allowed.

12. Applicant's argument regarding the placement of plates 36 in British reference 2111017 has been considered but is not deemed persuasive since added wheels could be placed on frame

11. Moreover, the jacks in the British reference would not be eliminated. The rejection calls for the addition of wheels not the elimination of the jacks.

13. Applicants' argument regarding Schaller being from non analogous art and lacking a teaching has been carefully considered but is not deemed persuasive. Schaller deals with the same problem as British reference 2111017, i.e., the removal of a cover.

14. Any inquiry concerning this communication should be directed to D. Underwood at telephone number (703) 308-1113.

Underwood/cw  
December 6, 2001

*Donald W. Underwood* 12/13/01  
DONALD W. UNDERWOOD  
PRIMARY EXAMINER